



State of New Hampshire  
DEPARTMENT OF ENVIRONMENTAL SERVICES

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Andrew Pysz  
PO Box 796  
Sunapee, NH 03782

NOTICE OF PROPOSED  
ADMINISTRATIVE FINE  
AND HEARING  
No. AF 01-157

December 27, 2001

**I. Introduction**

This Notice of Proposed Administrative Fine and Hearing is issued by the Department of Environmental Services, Water Division ("the Division") to Andrew Pysz, pursuant to RSA 485-A:17, RSA 482-A and Env-C 603.02 and Env-C 614. The Division is proposing that fines totaling \$1,000 be imposed against you for the violations alleged below. **This notice contains important procedural information. Please read the entire notice carefully.**

**II. Parties**

1. The Department of Environmental Services, Water Division, is an administrative agency of the State of New Hampshire, having its principal office at 6 Hazen Drive, Concord, NH.
2. Andrew Pysz is an individual having a mailing address of PO Box 796, Sunapee, NH 03782.

**III. Summary of Facts and Law Supporting Claims**

1. Pursuant to RSA 485-A:17, the Department of Environmental Services ("DES") regulates significant alteration of terrain, erosion control, and timber harvesting through a permit program. Pursuant to RSA 485-A:6, VIII, the Commissioner of DES has adopted Env-Ws 415 to implement this program.
2. RSA 485-A:22, V authorizes the Commissioner to impose administrative fines of up to \$2,000 per offense for violations of RSA 485-A:17, rules adopted under RSA 485-A:17, and permits issued under RSA 485-A:17. Pursuant to RSA 485-A:22, the Commissioner has adopted Env-C 603.02 to establish a schedule of fines for such violations.
3. Pursuant to RSA 482-A, DES regulates dredging, filling, and construction in and adjacent to surface waters of the state, shorelines of surface waters, and in wetlands. Pursuant to RSA 482-A:11, I, the Commissioner of DES has adopted Wt 100 *et seq.* to implement this program.
4. Pursuant to RSA 482-A:13 and RSA 482-A:14, III, the Commissioner is authorized to impose fines of up to \$2,000 per violation for violations of the statute, of rules adopted pursuant to the statute, or of any order or permit issued under the statute. Pursuant to RSA 482-A:11, I, the Commissioner has adopted Env-C 614 to establish the schedule of fines for such violations.

5. Charles Whitehead is the owner of land located in the town of Cornish, more particularly identified on Town of Cornish Tax Map 3 as Lot 29 (the "Property").

6. On January 2, 2000, Andrew Pysz filed an Intent to Cut Wood or Timber with the Town of Cornish. By signing the Intent to Cut, Mr. Pysz explicitly certified that "I have become familiar with RSA 227-J the timber harvest laws."

7. Pursuant to Env-Ws 415.04, when Mr. Pysz executed the Intent to Cut form he agreed to abide by *Best Management Practices for Erosion Control on Timber Harvesting Operations in New Hampshire* ("BMP").

8. On March 23, 2000, DES received a Notification of Forest Management Activities Having Minimum Wetlands Impact ("Notification") for proposed forestry activities on the Property.

9. The Notification identified Andrew Pysz as the logger for the forestry operations to be performed on the Property.

10. The BMP includes the following relevant erosion control recommendations:

Skid Trails:

"A well thought out efficient transportation system will minimize the area disturbed and vulnerable to erosion."

"Trail grades should be kept to 15% or less.

"Steeper grades are permissible for shorter distances.

"Move surface water quickly off trail surfaces and on to undisturbed forest floor." BMP pp. 16-17.

Cross Drainage Culverts:

"When constructing roads on sidehill locations, ditch the uphill side of the roadway to intercept surface runoff."

"When harvesting operation has been completed, the road should be stabilized by installing water bars and removing all pipe culverts from truck roads which will not be maintained." BMP pp. 26.-27

Water Bars:

"To intercept and divert water from side ditches and truck road or skid trail surfaces, minimizing erosion by decreasing the slope length of surface water flow." BMP p. 23

Haul Road, Skid Trail and Log Landing Stabilization:

"Old or new water diversion structures such as water bars, culverts, broad based dips, etc., must be operative before stabilization is initiated."

"Where feasible, prepare a seedbed by grading, removing debris, and scarifying the soil to a

minimum depth of 3 inches. When the area to be seeded has been recently loosened to the extent that an adequate seedbed exists, no additional treatment is required.”

“Inspect all seeded areas for failures and make necessary repairs.”

“Grasses and other herbaceous cover can stabilize bare mineral soil and minimize erosion. It is a good practice to seed disturbed areas following harvesting”

“Mulch seedlings and anchor on slopes or where subjected to a concentrated flow

“Track in seed with a dozer whenever possible to improve germination and establishment, especially when seeding flatpea or crownvetch and on sandy, droughty sites.” BMP pp. 45-46.

11. On March 14, 2000, Douglas Miner, Forest Ranger from the Department of Resources and Economic Development (“DRED”), issued an Official Notice to Andrew Pysz. The Specific Violation alleged in the Official Notice was as follows: “Failure to comply with [the BMP].” The Required Action in the Official Notice was to “[i]nstall siltation and erosion control devices on steep grades to control erosion and eliminate water quality problems.” The Required Action was to be completed by March 17, 2000.

12. On March 15, 2000, Division personnel conducted an inspection of the Property. During the inspection, the following was observed:

- a. A logging road had been constructed on the Property on a slope that exceeded 15% grade. Inadequate erosion control measures had been employed to control erosion and sediment flow from the logging operation.
- b. A culvert approximately 16 feet long had been placed in a perennial stream for the construction of a logging road over the stream. At the time of the inspection, the Division had no record of a permit for the culvert.

13. On April 13, 2000, Division personnel conducted a second inspection of the Property. During the inspection, the following was observed:

- a. Significant sediment flow was observed flowing down the main skid trail. Sediment was measured to be as much as a foot deep at the bottom of the skid trail.
- b. No erosion or sediment control measures were in place at the time of the inspection
- c. A borrow pit was observed on the Property. Deep gullies and rills were observed along the road leading to the borrow pit. Hay bales and a silt fence was observed along the borrow pit road, but the measures were inadequate to control erosion and sediment flow.
- d. Gullies and rills were observed as long as 300 feet and 18 inches of average depth along the main skid trail.

- e. To the south of the landing area, a depression in the skid trail was filled with approximately 18 inches of sediment. Sediment was observed flowing over the top of a silt curtain at this location.

14. On October 24, 2000, Division personnel conducted a third inspection of the Property. During the inspection the following was observed:

- a. At the time of the inspection, the logger had completed operations.
- b. A logging road extended from Route 12A to approximately half way up the slope and then branched off into several skidder trails.
- c. The Property generally sloped steeply toward Route 12A. Slopes exceeded the preferred grade for skid trails of 3-5% grade. Portions of the main skid road exceeded 40% grade.
- d. Sediment from forestry operations on the Property was observed at the entrance to the Property and in the roadside swale and culverts along Route 12A.
- e. Numerous gullies up to four feet deep caused by inadequate erosion control measures by loggers were observed on the Property off the main logging road on the Property.
- f. A borrow pit approximately 100 feet by 50 feet used during forestry operations was observed on the Property. A silt fence was located approximately 20 feet downhill from the edge of the borrow pit. The sides of the pit were unstable and heavily eroded, and sediment was observed sloughing off the sides of the pit toward the silt fence. The silt fence had not been maintained and sediment overflowed the top of the fence.
- g. A culvert had been constructed beneath the main logging road approximately half-way between Route 12A and the top of the logging road. The culvert was partially filled with sediment from material flowing from the side of the hill as a result of logging operations.
- h. No water bars were observed on the steep logging road.
- i. No check dams were present in the drainage channels adjacent to the logging road.
- j. Erosion and siltation controls had not been adequately deployed resulting in significant erosion and sediment flow throughout the Property.
- k. The hydrology of the site has been altered by the construction of the logging road and the failure to follow Best Management Practices throughout the logging operation. There are seepage outbreaks on the slope as a result of the altered terrain.
- l. The logging roads were not constructed according to Best Management Practices. The logging road was not back-dragged, and the site was not seeded or mulched (and tracked) when the logging operation was completed.

- m. Over 100,000 square feet of terrain had been significantly impacted as a result of the forestry activities.
15. RSA 227-J:7 states that “any person proposing to significantly alter the characteristics of the terrain, in such a manner as to impede the natural runoff or create an unnatural runoff shall comply with the provisions of RSA 485-A. Failure to comply with these requirements may result in penalties under RSA 485-A.”
16. RSA 485-A:17, I states in part that “[a]ny person proposing to dredge, excavate, place fill, mine, transport forest products or undertake construction in or on the border of the surface waters of the state, and any person proposing to significantly alter the characteristics of the terrain, in such a manner as to impede the natural runoff or create an unnatural runoff, shall be directly responsible to submit to [DES] detailed plans concerning such proposal and any additional relevant information requested by [DES], at least 30 days prior to undertaking any such activity.”
17. Env-Ws 415.02(y) defines “to significantly alter the characteristics of the terrain” as “to undertake any activity anywhere in the state that changes or disturbs the terrain so as to impede the natural runoff or create an unnatural runoff that has the potential to adversely affect water quality in the state’s surface waters. Examples of activities which significantly alter the characteristics of the terrain include, but are not limited to earth moving activities which result in a disturbance of more than 100,000 square feet of contiguous area or 50,000 square feet or more of contiguous area if within the protected shoreland as defined in RSA 483-B, and timber harvesting operations.”
18. RSA 485-A:17, III states “permits shall be granted for timber harvesting operations provided that the department of revenue administration’s intent to cut form is completed.”
19. Env-Ws 415.09(i) and (k) require temporary and permanent methods for preventing soil erosion and runoff to be employed during construction on the Property.
20. RSA 482-A:3, I states in part that no person shall “excavate, remove, fill, dredge or construct any structures in or on any bank, flat, marsh, or swamp in and adjacent to any waters of the state without a permit from [DES].”
21. Wt 303.04 defines a minimum impact project that requires a permit from DES to include, in part, construction of a culvert to permit vehicular access to a piece of property for forest management activities.
22. Env-C 603.02(e) authorizes a fine of \$500 “for a violation of the best management practices requirements of a permit obtained pursuant to Env-Ws 415.04 for timber harvesting operations, if: (1) no water quality violations are caused.”
23. Env-C 614.02(c) defines a Class I Violation in part as “(c) [u]nauthorized fill of 50 linear feet or less of areas to the shoreline or bank along the surface waters, calculated as follows:...(2) For perennial streams or rivers, the total disturbance shall be determined by summing the lengths of disturbances to the channel and the banks.

24. Env-C 614.02 authorizes a fine of \$500 for Class I Violations of wetlands rules.

#### IV. Violations Alleged

Andrew Pysz has violated RSA 485-A:17 by failing to comply with the BMP, specifically by:

- a. constructing a haul road or skid trail on grades steeper than 10% or 15%, respectively;
- b. constructing roads on side hill locations, without ditching the uphill side of the roadway to intercept surface runoff;
- c. failing to divert water away from the road surface and onto undisturbed forest floor by the use of ditches;
- d. failing to utilize water bars to intercept and divert water from side ditches and truck road or skid trail surfaces;  
  
failing to stabilize haul roads and skid trails;
- f. failing to seed areas of exposed soil that are subject to erosion where permanent vegetative cover is needed;
- g. failing to mulch seedlings or anchor on slopes where subjected to concentrated flow;
- h. failing to track in seed with a dozer whenever possible to improve germination and establishment;
- i. failing to inspect all seeded areas for failures and make necessary repairs;
- j. failing to install cross drainage culverts to collect and transmit water flows from side ditches and seeps, under truck haul roads and major skid trails;
- k. failing to install culverts at appropriate intervals according to grade;
- l. failing to stabilize the roads when harvesting operation was completed, by installing water bars and removing all pipe culverts from truck roads which will not be maintained; and
- m. failing to install erosion control measures on the Property.

For these violations, Env-C 603.02(e) specifies a fine of \$500.

2. Andrew Pysz has violated RSA 482-A:3, I by constructing a culvert through a perennial stream without a permit from DES. For this violation, Env-C 614.02 specifies a fine of \$500.

**The total fine being sought is \$1,000.**

## V. Required Response, Opportunity for Hearing

Pursuant to Env-C 601.06, you are required to respond to this notice. Please respond no later than January 28, 2002 using the enclosed colored form.

1. If you would like to have a hearing, please sign the appearance section of the colored form and return it to James Ballentine, DES Enforcement Paralegal, as noted on the form. A Notice of Scheduled Hearing will be issued.

2. If you choose to waive the hearing and pay the proposed fine, please have the authorized representative sign the waiver (lower portion) and return it **with payment of the fine** to Mr. Ballentine.

3. If you wish to discuss the possibility of settling the case, please have the authorized representative sign the appearance and return it to Mr. Ballentine **and** call Mr. Ballentine to indicate your interest in settling.

You are not required to be represented by an attorney. If you choose to be represented by an attorney, the attorney must file an appearance and, if a hearing is held, submit proposed findings of fact to the person conducting the hearing.

## VI. Determination of Liability for Administrative Fines

Pursuant to Env-C 601.09, in order for any fine to be imposed after a hearing, the Division must prove, by a preponderance of the evidence, that you committed the violations alleged and that the total amount of fines sought is the appropriate amount under the applicable statute and rules. Proving something by a preponderance of the evidence means that it is **more likely than not** that the thing sought to be proved is true.

If the Division proves that you committed the violations and that the total amount of fines sought is the appropriate amount under the applicable statute and rules, then the fine sought will be imposed, subject to the following:

Pursuant to Env-C 601.09(c), the fine will be **reduced by 10%** for each of the circumstances listed below **that you prove, by a preponderance of the evidence, applies in this case:**

- The violation was a one-time or non-continuing violation, **and** you did not know about the requirement when the violation occurred, **and** the violation has not continued or reoccurred as of the time of the hearing, **and** any environmental harm or threat of harm has been corrected, **and** you did not benefit financially, whether directly or indirectly, from the violation.
2. At the time the violation was committed, you were making a good faith effort to comply with the requirement that was violated.
3. You have no history of non-compliance with the statutes or rules implemented by DES

or with any permit issued by DES or contract entered into with DES

- 4 Other information exists which is favorable to your case which was not known to the Division at the time the fine was proposed.

**\*\*\*\*\*IMPORTANT NOTICE\*\*\*\*\***

**An administrative fine hearing is a formal hearing.** Any hearing will be tape recorded, and all witnesses will testify under oath or affirmation. At the hearing, the Division will present testimony and evidence to try to prove that you committed the violation(s) alleged above and that the fine(s) should be imposed. **The hearing is your's opportunity to present testimony and evidence that you did not commit the violation(s) and/or that the fine(s) should not be imposed, or that the fine(s) sought should be reduced.** If you have any evidence, such as photographs, business records or other documents, that you believe show that you did not commit the violation(s) or that otherwise support your's position, you should bring the evidence to the hearing. you may also bring witnesses (other people) to the hearing to testify on your behalf.

**If you wish to have an informal meeting to discuss the issues, you must contact Mr. Ballentine at (603) 271-6072 to request a prehearing conference.**

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Information regarding this proposed fine may be made available to the public via the DES Web page ([www.state.nh.us.des](http://www.state.nh.us.des)). If you have any questions about this matter, please contact James Ballentine, DES Enforcement Paralegal, at (603) 271-6072.

565  **COPY**  
Harry T. Stewart, P.E., Director  
Water Division

Enclosure (NHDES Fact Sheet #CO-2000)

cc: Gretchen C. Rule, Administrator, DES Legal Unit  
Cornish Board of Selectmen  
Cornish Conservation Commission  
Ana Ford, WQE/WD/DES  
Mary Ann Tilton, DES Wetlands Bureau (File #00-424)  
Charles Whitehead